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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

WALTER ELAM,

Plaintiff,

-against-

15 Civ 7215

CONCOURSE VILLAGE, INC., ANTHONY
JAMES, INDIVIDUALLY, and LETITIA BOWRY,
individually,

Defendants.

- - - - -x

DEPOSITION of SHERILL HENRY, taken by
Plaintiff, at the offices of The Harman Firm,
220 Fifth Avenue, New York, New York, on Friday,
May 20, 2016, commencing at 2:17 p.m., before
Margaret M. Harris, a Shorthand (Stenotype)
Reporter and Notary Public within and for the
State of New York.

A P P E A R A N C E S :

THE HARMAN FIRM
Attorneys for Plaintiff
220 Fifth Avenue
New York, New York 10001

BY: EDGAR RIVERA, ESQ.

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Attorneys for Defendants
350 Fifth Avenue
New York, New York 10118

BY: STEFANIE R. MUNSKY, ESQ.

ALSO PRESENT:

Walter Elan

1 Henry

2 employees at Concourse?

3 A No. We had a number of changes
4 and a number of people left. So we had, you
5 know, different people in those positions.

6 Q Who was responsible at Concourse
7 for human relations type matters?

8 A I would be, but then there is a
9 human resources department in Boston, so I would
10 liaise with them. And the bookkeeper to some
11 extent also would deal with some of the human
12 resources issues.

13 Q So human resources was covered by
14 Winn?

15 A Yes.

16 Q Not Concourse?

17 A Yes, that's very true, yes.

18 But we would have to report to
19 the board and sometimes they would have to make
20 decisions on certain things.

21 Q Could you give me an example of a
22 situation where the board would make a decision
23 on a human resources issue?

24 A Like we have, we would have like
25 a union contract. The board would have to make

1 Henry

2 A For instance, if we disciplined a
3 board employee, we would cc the board on the
4 disciplinary action.

5 If we get to the stage where we
6 are recommending termination, we would advise
7 the board also.

8 Q As far as you understand, is
9 there any process the board must follow before
10 it can terminate an employee?

11 A There wasn't anything set in
12 writing. I did not see anything in writing.

13 Q Was there a process nonetheless?

14 A We instituted a process.

15 As I said, I cannot speak to what
16 took place before we got there in 2012, but
17 that's the process we instituted.

18 Q And the process was Winn makes a
19 recommendation and the board either adopts it or
20 doesn't?

21 A Exactly. We bring them into the
22 conversation. We provide the disciplinary
23 action reports to them and we incorporate them
24 in the conversation. And then they decide
25 amongst themselves whether or not they agree

1 Henry

2 you are going to be out, yeah.

3 Q And when Anthony came on, you
4 were Elam's supervisor?

5 A Yes.

6 Q Was Anthony ever Elam's
7 supervisor?

8 A As I said, that relationship was
9 never really like clearly established between
10 the lead supervisor and the --

11 Q The stockroom supervisor?

12 A Yes. But I do know they always
13 were, my history had been that they worked
14 together to get, you know, the supplies.

15 Q But one wouldn't have authority
16 over the other to make disciplinary decisions?

17 A I did not see that with Headley,
18 who was the lead supervisor.

19 But, as I said, it wasn't spelled
20 out, that relationship was not spelled out.

21 Q Was the lead supervisor able to
22 give binding directives to the stockroom
23 supervisor?

24 A Yeah, I would say so, yeah,
25 because he's the one who really has the

1 Henry

2 Q Was he ever more specific with
3 what emergency situation he meant?

4 A Sometimes he would say, sometimes
5 he wouldn't say. That's when I called him and I
6 find out that he's not there, he would say, "I
7 had to go home because there was a problem with
8 my wife."

9 Q Do you know about his wife?

10 A Yeah.

11 Q Can you describe --

12 A He had told me that she got into
13 a car accident some years ago and that she is
14 disabled.

15 Q Do you know anything about the
16 nature of her disability?

17 A Walter advised that she was hit
18 by a car, so it created some disability problems
19 for her.

20 Q But do you know anything more
21 specific than just generally disability
22 problems?

23 A No. Sometimes he would tell me
24 that she would have to undergo operations and
25 that type of stuff.

1 Henry

2 That was Tyrone Bands.

3 Q Were new implementations -- were
4 new procedures ever implemented?

5 A Well, Tyrone was about to do
6 that, but then he left.

7 Q Did Anthony James implement any
8 new procedures?

9 A When he came in, he saw the same
10 issue and he wanted some changes made also.

11 Q Did he propose anything?

12 A I do know he wanted things set up
13 differently. He wanted like computer-type
14 reports to be provided.

15 Q Computer-type reports?

16 A Yeah.

17 Q What are these reports?

18 A Well, he wanted him to establish
19 a proper reporting mechanism.

20 Q And by "reporting mechanism,"
21 what are we talking about?

22 A In terms of how much stocks, you
23 know, whatever supplies there were.

24 Q Are we talking about reporting
25 inventory?

1 Henry

2 A They had keys. They were the
3 only ones who were allowed the keys.

4 So Anthony wanted to set up a
5 schedule that at least between the prime time,
6 you know, between 6:00 and 9:00 or 7:00 and 9:00
7 when people are calling in for stuff that there
8 is someone there to provide the supplies to the
9 handyman.

10 Q And would the schedule work where
11 there are three supervisors and they would take
12 turns working evenings five days a week?

13 A Yes -- well, I don't know -- he
14 was playing around with the schedule as to how
15 they were going to do it, because you can't have
16 everybody working seven days a week, so he had
17 to set it up.

18 So I do know he was playing
19 around with how it was going to be set up.

20 Q Did that cause any issues for Mr.
21 Elam?

22 A Mr. Elam did say that he had to
23 take care of his wife in the evening, so he
24 wasn't able to participate in that particular
25 schedule.

1 Henry

2 Q So what happened when he objected
3 to that?

4 A He wasn't put on the schedule.

5 Q Who made that decision?

6 A I think it's Anthony. Anthony
7 came to me and said that he wasn't going to, he
8 wasn't going, that Elam was not going to be on
9 the evening schedule.

10 I don't know if it was his or the
11 board's, because they are always talking,
12 everybody was talking to the board, so
13 sometimes, you know.

14 Q Did Elam come to you?

15 A No. We were in a meeting, I
16 think, from what I can recall, to best of my
17 recollection.

18 Q And what happened during that
19 meeting?

20 A We were in a meeting when we were
21 discussing the schedule and Elam did say that he
22 would not be able to participate in the schedule
23 because he took care of his wife during the
24 evenings.

25 Q What did Anthony say?

1 Henry

2 Elam's wife. He just said that he had to take
3 care of his wife in the evening and he would not
4 be able to do that.

5 Q Did anybody ask about what the
6 problem was with his wife?

7 A No, because I guess we all
8 generally, because we generally knew, everybody
9 knew that Elam's wife was in an accident.

10 Q So everyone knew that Elam was
11 providing care for her?

12 A Yes, everyone knew that.

13 Q And everyone includes Anthony
14 James?

15 A I do not know for him, because he
16 just came on board, but since I was there since
17 2012, we all knew about it.

18 Q But by the end of the meeting
19 Anthony knew?

20 A Yeah.

21 Q Or certainly by the two days when
22 he made the decision not to include him, by that
23 point he knew?

24 A Yeah, by that point he knew,
25 yeah. Because he had joined like a few months

1 Henry

2 Q Not being at work and not calling
3 in, would that be grounds for discipline?

4 A Yes.

5 Q What's that discipline procedure
6 supposed to look like?

7 A You are supposed to write it up,
8 supposed to have a conversation when you advise
9 them.

10 Q To first have a conversation with
11 the person?

12 A Right. And then you write it up.

13 Q If it happens again?

14 A Yes.

15 And then you write it up again,
16 and then you write it up again.

17 Q So this is progressive
18 discipline?

19 A Yes.

20 Then you suspend and then if it
21 continues, then you terminate.

22 MR. RIVERA: Mark this,
23 please.

24 (Document Bates stamped
25 D000102 was marked as Henry Exhibit

1 Henry

2 One day he was crying and he was
3 saying "I have to go take care of my wife."

4 I said, "Walter, you know that is
5 not the problem" --

6 Q When was this?

7 A -- "the problem is the protocol."
8 Sometime last year.

9 Q At sometime in 2015 he was crying
10 at Concourse that he needed to take care of his
11 wife to you?

12 A To me.

13 What had happened is I had
14 written him up for not advising me again that he
15 was going to be out.

16 And he was crying that his wife
17 was ill, he said he had to do something with his
18 wife.

19 I said to him "That is not the
20 issue. The issue is protocol. Let me know that
21 you are leaving the site so I don't have to be
22 calling all over the place trying to find you."

23 Q But at that point you never
24 thought to give him the FMLA notice?

25 A No, because we had no problems

1 Henry

2 with him going to take care of her. All we
3 needed was notice that he was going.

4 By the time I got there, I was
5 told that Walter's wife was in a serious
6 accident and that sometimes he would have to
7 take care of her.

8 I was told that by board members.

9 But my only issue was that he
10 would never say when he was leaving, that was
11 the issue.

12 So I knew that it was like
13 accepted that he would go take care of his wife
14 because she was very ill, or she was ill, I do
15 not know to what extent.

16 But my issue was advise us. That
17 was my issue with him.

18 And even, you saw this, you know,
19 he used to come back in the evening and do the
20 things that I asked him to do, but during the
21 day when he goes off, he would never say he was
22 going off.

23 And that's why after all this
24 stuff I indicated that was my issue and that was
25 always my issue with him.

1 Henry

2 And he took the lead doing that.

3 And his concern was that Walter was not there --

4 Q But the policy was --

5 A -- when he was supposed to be
6 there.

7 Q But the policy was to --

8 A I wouldn't inform him -- sorry --
9 let me just finish -- and he didn't inform me
10 that he was not there.

11 Q But the policy was for employees
12 to inform their supervisor, correct?

13 A That's quite true.

14 Q And he wasn't his supervisor,
15 James?

16 A He wasn't his supervisor. Yeah,
17 I would say officially he wasn't.

18 Q In any real sense, he wasn't his
19 supervisor?

20 A I would say officially, because
21 there was some talk with the board as to him
22 kind of like leading the staff in absence of a
23 maintenance director, because we did not have a
24 maintenance director.

25 MR. RIVERA: Let's take a

1 Henry

2 suspended?

3 A Yes.

4 Q Why was he suspended?

5 A I think he didn't show up to work
6 and he didn't call and James suspended him.

7 Q Was that suspension overturned?

8 A By Verney. Verney recommended,
9 because the board makes the final decision with
10 regards to the nonunion employee's discipline,
11 disciplinary action against nonunion employees.

12 And I do know that Elam called
13 Winn's human resources department and I don't
14 know if it was Verney, but a couple of them
15 called me together and they recommended that he
16 should not be suspended and that he should be
17 paid, and I passed that information on to the
18 board.

19 Q Did they say why he shouldn't be
20 suspended and why he should be paid?

21 A They did not think it was
22 egregious, is that the word?

23 Q Egregious, I think.

24 A Egregious enough, yes.

25 Whatever the issue was, I can't

1 Henry

2 recall exactly what the issue was, but they did
3 not think that it was egregious enough to
4 suspend him.

5 Q So they didn't think that him
6 being absent, an appropriate consequence was a
7 three-day suspension?

8 A No, they didn't think so.

9 Whatever the reason was, they
10 didn't think that he should have been suspended.

11 Q It was Mr. James, not you, not
12 anyone else, who suspended him?

13 A That's quite true.

14 Q Even though they were both
15 supervisors?

16 A Who was a supervisor?

17 Q James and Elam.

18 A Yes, yes.

19 Q And never in your experience has
20 one supervisor ever even disciplined another
21 supervisor; is that correct?

22 A I didn't have the kind of
23 scenario that I had at Concourse Village.

24 Q When there was a lead supervisor,
25 the lead supervisor prior to Anthony, he never

1 Henry

2 I think you described it as poor performance?

3 A Yes.

4 Q Did you participate in those
5 decisions to terminate those supervisors?

6 A There were some that I made
7 recommendations, yes.

8 Q For some of them?

9 A Yes.

10 Q Which ones didn't you?

11 A Walter I wasn't involved in the
12 process. It was brought to me. It was brought
13 to my attention by the board, by board members,
14 by a group of board members.

15 Q Including Letitia Bowry?

16 A Yes.

17 Q What did Leroy Meyers say to you
18 during that meeting?

19 A He wasn't there. He was brought
20 in, Walter went to get him.

21 Q So did he get him?

22 A Yeah, he did get him. He brought
23 him down.

24 Q What did Leroy say?

25 A He was defending, he defended

1 Henry

2 Walter.

3 Q What did he say exactly?

4 A He said that he shouldn't be
5 terminated.

6 Q Did he give any reason?

7 A I can't recall, he was screaming.

8 Q Leroy was screaming?

9 A Yes. I was more concerned, he's
10 a very frail 90 something year old and he was
11 screaming, so I was more concerned about his
12 health than what he was saying.

13 Q When you did make recommendations
14 for people to be terminated, who wrote the
15 notices?

16 A I did.

17 Q Each time?

18 A Yeah. I would have been going
19 through disciplinary, you know, talking to them,
20 then started writing the stuff up and when there
21 was no change at all, then I would take the
22 whole package to the board.

23 Q And you would write the
24 termination letter?

25 A And I would write a termination